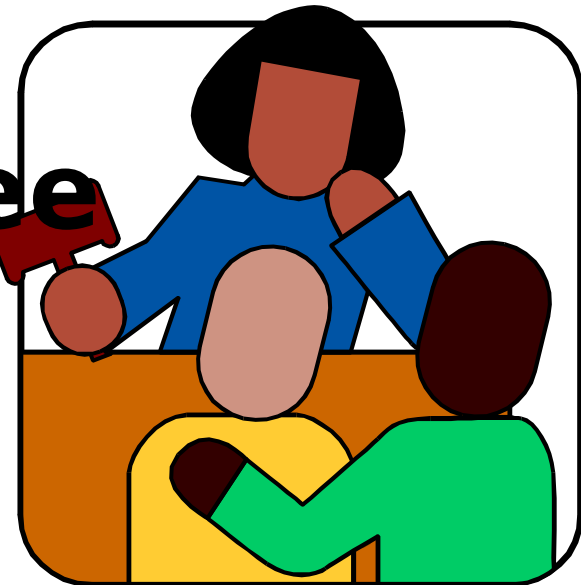


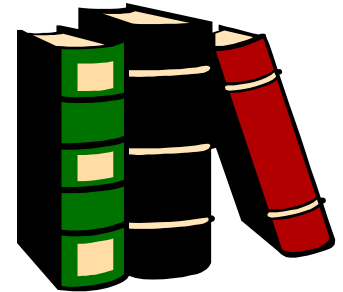
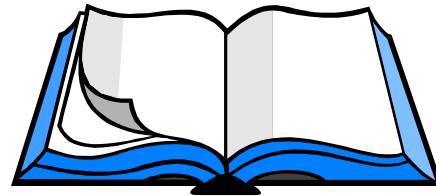
# TAKING CORRECTIVE ACTION:

## Dealing with the Problem Employee



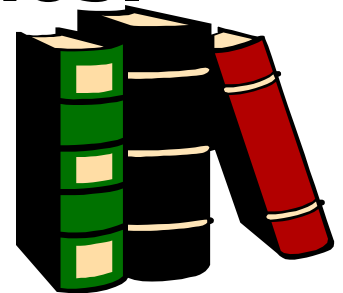
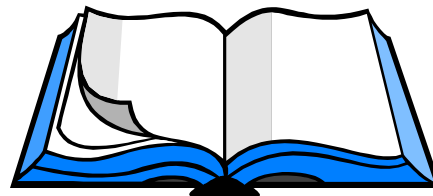
# OBJECTIVES

- **Be able to explain the different processes for correcting conduct and performance problems.**
- **Be able to identify and explain the key principles when taking corrective action.**



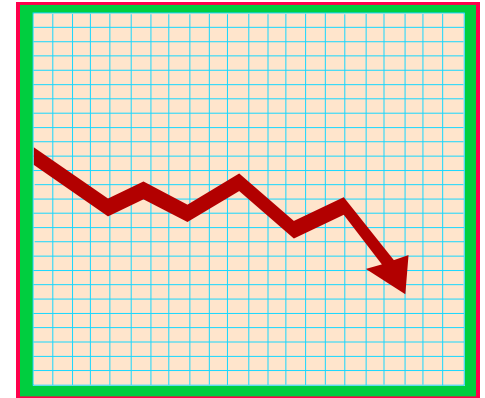
# OBJECTIVES

- **Be able to identify the appropriate redress avenue and explain how the redress process works.**
- **Be able to determine the appropriate responses to typical case scenarios.**



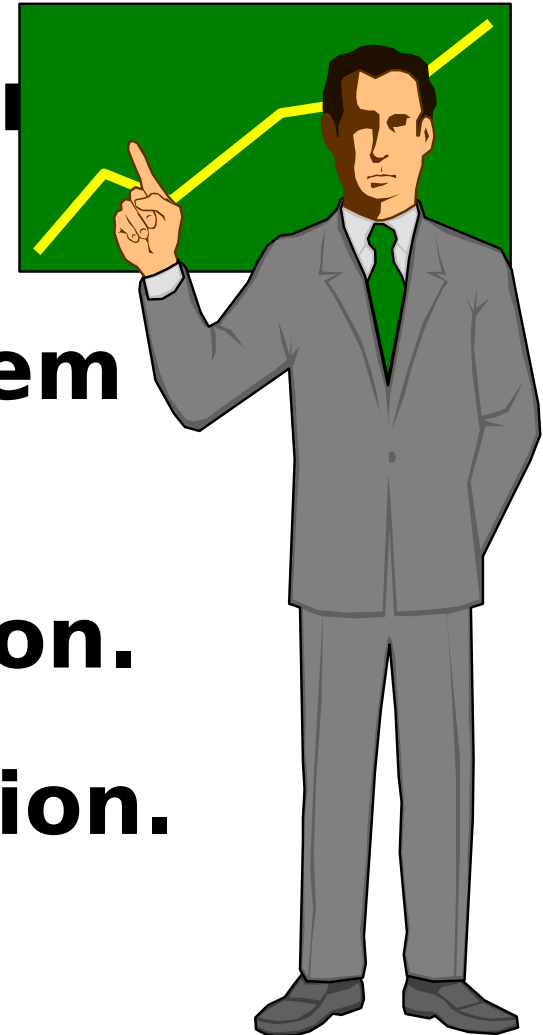
# PROBLEM EMPLOYEES IMPACT ON PRODUCTIVITY

- **Wastes time.**
- **Disrupts the work place.**
- **Brings down morale.**
- **Reduces team performance.**
- **Creates a negative work place.**



# BEFORE RESORTING TO CORRECTIVE ACTION.....

- **Assess your problem employee.**
- **Confront the problem early.**
- **Monitor the situation.**
- **Take corrective action.**



# **ASSESS YOUR PROBLEM EMPLOYEE**

## **What is the issue?.....**

- The employee “doesn’t know” → **Knowledge**
- The employee “can’t do” → **Aptitude**
- The employee is “not allowed to do” → **System problem**
- The employee “won’t do” → **Attitude**

# EXERCISE TIME

## Performance or Conduct?

In the following scenarios,  
determine if there is a  
performance or conduct  
problem by writing in a P =  
Performance or C = Conduct in  
the space provided.



\_\_\_\_\_ Fred is an Admin Assistant. He has a habit of frequently coming in 10-15 minutes late.

\_\_\_\_\_ Mary is a Budget Analyst. Her job includes making cost estimates. Her supervisor is getting concerned because her estimates just don't add up.

\_\_\_\_\_ Tim is a Computer Operator and spends a lot of time alone in the computer room. Recently a co-worker walked in and saw an inappropriate web site up on his computer screen.

\_\_\_\_\_ One of Nathalie's performance objectives is to provide accurate and timely manpower advise to managers. Several of the managers have complained that when they ask critical questions, she becomes boisterous and makes insulting comments.

\_\_\_\_\_ Greg is a vehicle operator. He has had 3 minor accidents in the past several weeks. Prior to those accidents he has had a perfect record. His job requires a driver's license. His performance plan includes a vehicle operation objective indicating that no accidents are allowed.

\_\_\_\_\_ Fred is an Admin Assistant. He has a habit of coming in 10-15 minutes late everyday. He also has a habit of turning in his

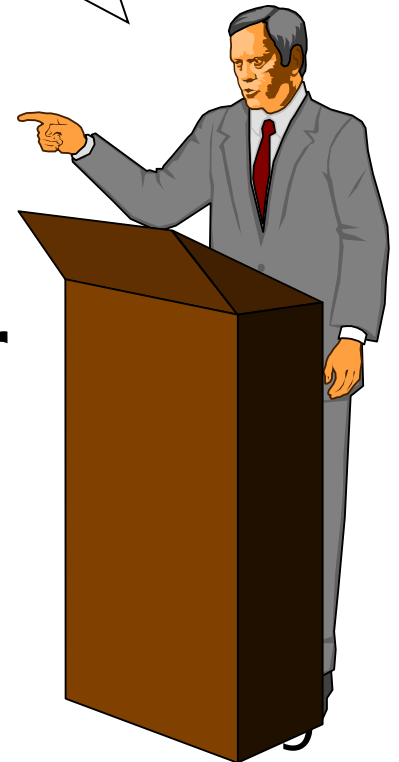


# CONFRONT THE PROBLEM EARLY

## Prevents:

- Slowdown in productivity.
- The problem from spreading.
- A sense of entitlement.
- Lower levels of conduct and/or performance from becoming the standard.

As the  
supervisor,  
you must act.



# **MONITOR THE SITUATION**

## **➤ Communicate, Communicate, Communicate**

- Do provide good and bad feedback.**
- Do be specific and provide examples.**
- Do think about what you say.**
- Do document and keep memory joggers.**

- Don't provide only negative feedback.**
- Don't jump to conclusions.**
- Don't overlook the importance of words.**

# **TAKING DISCIPLINARY ACTION**

## **Purpose**

- **To correct behavior/conduct.**
- **To correct and improve performance.**
- **Prevent prohibited activities**
- **Maintain conduct & morale of workforce.**



# **BASIS FOR DISCIPLINARY ACTIONS**

## **CONDUCT (Won't Situations)**

- **5 USC 75, 5 CFR 752**  
- **Disciplinary Actions**
- **5 USC 73, 5 CFR 2635, EO 12674 & 12731**  
- **Principles of Ethical Conduct for Government Officers & Employees**

# **CAUSES OF MISCONDUCT**

- **Employee personal problems**
- **Poor attitude toward work**
- **Lax or inconsistent enforcement of rules**
- **Desire for personal gain at the expense of others**
- **Lack of motivation**
- **Bad example set by others**
- **Provocation by supervisors or coworkers**
- **Lack of maturity**
- **Pressure and personal stress**

# **KEY PRINCIPLES**

## **➤ Progressive Discipline**

- intent is to correct the conduct.**
- an approach to modifying undesirable employee behavior through the use of a range of disciplinary consequences that are applied depending upon the nature and history of the particular employee's misconduct.**
- a series of increasingly serious responses to repeat problems by**

# KEY PRINCIPLES

- **Timely** - action must be taken promptly to be supportable and meaningful.
- **Reasonable** - the penalty must fit the offense.
- **Consistent** - similar penalty for similar offense.
- **Non-discriminatory** - action must be based on the merit's of the case.

# **KEY PRINCIPLES**

## **Range of Disciplinary Actions**

### **INFORMAL**

**Counseling**

**Oral admonitions**

**Written warnings**

### **FORMAL**

**Written reprimand**

**Suspensions**

**Demotions**

**Removals**

**Note: always check your collective bargaining agreement**



# WRITTEN REPRIMAND

- **No “Proposal” issued**
- **Supervisor investigates & discusses with employee**
- **Letter must contain:**

- 1 Description of offenses
- 2 Retention in OPF (1yr. - 3 yr.)
- 3 Recount former instances
- 4 Warning - more severe action
- 5 Advise on EAP (if appropriate)

- 6 Grievance rights

# KEY PRINCIPLES

## ➤ **Promote the “Efficiency Of The Service”**

→ The action helps your agency function better.

→ **Nexus** - reasonable connection between the offense and its effect on the job or agency.

## ➤ **Off-Duty Misconduct**

→ “egregious” standard - depending on the

# EXERCISE TIME

## Nexus or Not?

.....

**Determine whether a sufficient nexus exists for discipline to be initiated. Where nexus is found, explain the connection between the misconduct and the efficiency of the service.**



**1. In the parking lot of a downtown bar where he had been drinking since leaving work, a security officer discharges four rounds from his service revolver into his stalled auto.**

**2. According to the police log in a local news-paper, a supply clerk was arrested over the weekend for DUI. The brief paragraph does not mention the individual's employer.**

**3. The Director of Resources pleads guilty to theft by deception. The plea resulted from a charge of passing bad checks at a local store.**

**4. A forklift operator is cited for disorderly conduct by local police following an off-duty altercation with his neighbor in which no one was injured.**

**5. The chief counsel is involved in a minor auto accident on her way home from work. Police determine she is at fault and issue a citation for failing to yield the right of**

**6. A heavy mobile equipment mechanic is charged with aggravated assault after seriously injuring his mother in a domestic dispute.**

**7. With the caption, “This local bureaucrat likes to boogie!,” a nude picture of a division chief appears in a porno magazine featuring ads for sexual partners. The magazine is sold at local newsstands.**

**8. After complaints are lodged by his ex-girlfriend, an employee assistance program (EAP) counselor is picked up by local police and incarcerated for stalking.**

**9. During a game of volleyball at the annual employee appreciation day picnic, a budget analyst initiates a shoving and shouting match with her supervisor who is playing on the opposing team.**

**10. While vacationing in another state, the director of information management is arrested for impersonating a police officer. Although the incident is not reported in**

# **KEY PRINCIPLES**

## **FRAMING CHARGES**

**The charge is a written statement of the facts about the offense. It should:**

- Not be overly technical or legalistic.**
- Be tied to specifications.**
- Be fully supportable so it is not thrown**

# **TAKING THE ACTION**

- **Investigate the incident**
- **Document your findings**
- **Determine if disciplinary action is appropriate**
- **Determine the penalty**
- **Propose the action**
- **Deciding official renders decision**

# WHY INVESTIGATE.....?

**The purpose of an investigation is to find out what really happened by establishing the facts.**





# ONCE YOU FIND OUT THE FACTS...



- **decide whether to discipline**
  - **whom to discipline**
  - **for what reasons**

## **Two main reasons agencies lose their case:**

- **Did not prove the facts, or**
- **Proved the facts, but the conduct was not actionable.**

# INVESTIGATING THE INCIDENT...



**Remember, the purpose is to establish the facts.**

**Get the employee's side of the story first whenever possible:**

- **contact employee as soon as possible**
- **be aware of Right to Representation (Weir)**
- **be aware of Privacy Act concerns**

# INVESTIGATING THE INCIDENT... (CONTINUED)

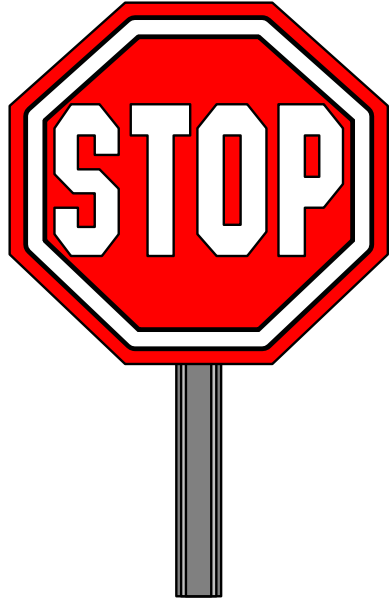
**Next step is  
to interview anyone who  
witnessed or  
could have witnessed the  
incident**

**- be sure to talk to all, even  
those  
who say nothing happened**



**- get something in writing from**

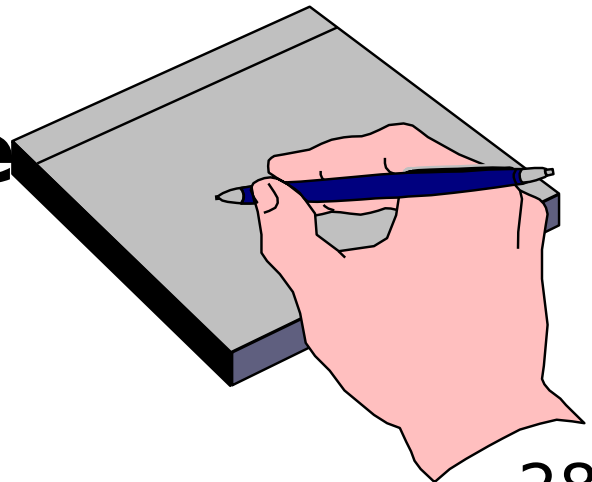
# INVESTIGATING THE INCIDENT... (CONTINUED)



BE SURE TO DOCUMENT YOUR FINDINGS

**Describe the  
incident/discussion in  
detail:**

- **Date & time**
- **Place**
- **Witnesses**
- **Behavior**
- **Tell it like it is**



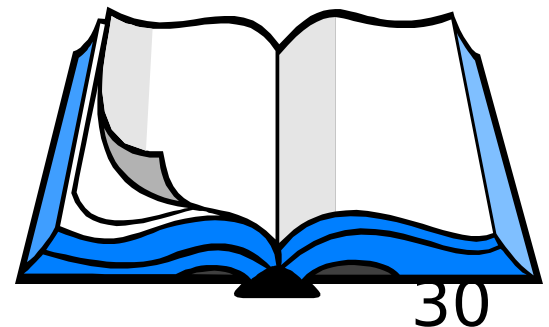
# **DETERMINE IF DISCIPLINARY ACTION IS APPROPRIATE**

- **Can you prove the facts?**
- **Is there a nexus?**



# DETERMINE THE PENALTY

- **Consult the “Table of Penalties”.**
  - ➔ provides suggested penalties .
  - ➔ good reference for charges (labeling the o
- **Consider the Douglas Factors.**
  - ➔ 12 factors that must be considered.



# **DOUGLAS FACTORS**

- **Nature, Seriousness Of Offense**
- **Job Level, Type Of Employment**
- **Past Disciplinary Record**
- **Past Work Record**
- **Effect On Ability To Perform Satisfactorily**
- **Consistency Of Penalty For Similar Offenses**

# **DOUGLAS FACTORS**

- **Notoriety Of Offense, Impact On Agency Reputation**
- **Employee Warned Or Clearly Aware Of Rules**
- **Potential For Rehabilitation**
- **Mitigating Circumstances**
- **Adequacy, Effectiveness Of**



# **PROPOSE THE ACTION**

## **Proposing Official**

### **Responsibilities:**

⇒ **Supervisor Determines Facts, Need For Action**

⇒ **Consults With CPAC, Labor Counselor, Legal, etc.**

⇒ **Considers Table Of Penalties & Douglas Factors (Mitigation and**

# **PROPOSE THE ACTION**

## **Employee Due Process**

- **Reasonable advance notice (30 days) including statement of the specific facts in support of the proposed action.**
- **Opportunity to review the materials relied upon, including the governing regulations.**
- **Opportunity to reply**
- **Right to representation**
- **Written notice of decision**
- **Opportunity to grieve, appeal or**

# **“CRIME PROVISION”**

**(Shortened Notice Period)**

- **Exception to 30 day advance notice.**
- **Reasonable cause to believe the employee has committed a crime for which sentence of imprisonment may be imposed.**
- **Reply NLT 7 days.**
- **May place employee on administrative leave or**



# **PROPOSE THE ACTION**

## **Content of the Proposal**

- **OFFENSES**

- “properly framed” charges

- **PROPOSED PENALTY**

- reasonable given facts and Table of Penalties

- **SPECIFIC FACTS**

- only those relied upon in determining penalty

- **CONSIDERATIONS**

- **RIGHT TO REPLY AND TIME PERIOD**

- **RIGHT TO REPRESENTATION**

- **NAME OF DECIDING OFFICIAL**

- **CONTACTS FOR MATERIALS/REGULATIONS**

- **STANDARD REFERRAL STATEMENT (EAP)**<sub>36</sub>

# **DECIDING OFFICIAL**

## **Responsibilities:**

- ⇒ Provides Impartial Review Of Adverse Action**
- ⇒ Considers Any Employee Response**
- ⇒ Considers Douglas Factors**
- ⇒ Renders Final Written Decision In A Timely Manner**

# **DECIDING OFFICIAL RENDERS DECISION**

## **Content of the Decision**

- **REFERENCE TO PROPOSAL**
- **NATURE OF EMPLOYEE REPLY**
- **CONSIDERATION GIVEN TO EMPLOYEE REPLY  
DECISION**
- **EFFECTIVE DATE OF RESULTING ACTION**
- **RIGHTS TO GRIEVE OR APPEAL (if applicable)**

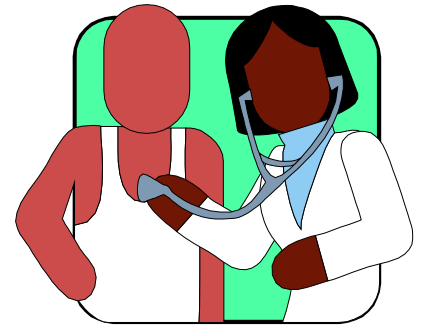
# MEDICAL ISSUES IN THE WORKPLACE



# **DISABILITY DISCRIMINATION**

## **DEFINED -**

**Failure to provide  
reasonable  
accommodation to a  
qualified disabled  
employee when it would  
not be an undue hardship  
and the accommodation is  
available...**





# DEFINITIONS

- **Qualified disabled person.**
- **Reasonable accommodation.**
- **Undue hardship.**

**Reference:**  
**<http://www.eeoc.gov/>**

# **QUALIFIED DISABLED PERSON**

**One who, with or without  
reasonable accommodation,  
can perform the essential  
duties of their position**



# REASONABLE ACCOMMODATION

## Defined...

- Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.



# **Let's take a closer look at reasonable accommodation....**

## **Examples:**

- job restructuring;**
- modified work schedule;**
- reassignment to a vacant position;**
- acquiring or modifying equipment;**
- changing exams, training materials, or policies;**
- providing qualified readers or interpreters.**

# **What is not required...**

- Lower performance expectations;**
- Lower conduct requirements;**
- Restructure major duties;**
- Create new jobs;**
- Spend excessive amounts of money**

**(BE CAREFUL not to cry budget woes);**

- Disrupt other employees;**
- Endanger the employee, coworkers or public.**

# EXERCISE TIME

## DISABILITY AND REASONABLE ACCOMMODATION



**For each of the following situations,  
determine whether the employee  
meets the definition of:**

**a) a disabled person**

**b) whether he/she is a qualified disabled person**

**c) what accommodation, if any, should the  
agency provide?**

- if an accommodation is requested by the  
employee, is it reasonable or would it prove  
to be an undue burden to the agency?**

**1. Tim is a Computer Programmer. He has Multiple Sclerosis (MS). Due to the gradual loss of muscle coordination associated with his MS, he has recently begun to use a wheelchair. The duties of his position are primarily sedentary. His performance ratings over the last three years show no deterioration in his Success Level 2 (Highly Successful) performance.**

**2. James is a involved in the fabrication of plastic components. He began experiencing some breathing difficulties and was diagnosed as suffering from asbestosis. As an accommodation, he proposed the use of an air-feed respirator. The respirator had a range of 25 feet which would preclude his access to 48 certain work areas. he would only be able to**



**3. Paul has epilepsy and uses medication to control the condition. He is an Electronics Technician. His duties include use of meters that measure electric current, soldering equipment and open circuits for testing computer chips and other electronic components. Several months ago, he had two serious seizures while at work. Both times, he fell from his workbench and was hospitalized. During the second hospitalization, his physician recommended he undergo experimental brain surgery to help control the seizures and Paul agreed. Following a six week recuperation, Paul's doctor has cleared him to return to work. Paul has been back for a week and has already had another seizure. This time, he knocked the soldering iron off his workbench**

**4. Gilbert, after perceiving that he had been given an unfair workload, began to scream obscenities and then went on to smash dividers between desks and throw a chair and a printer. Although he did not strike or threaten anyone directly, Gilbert was diagnosed as having “an explosive personality disorder” and stated during a later psychiatric interview that he was “fearful of homicidal ideation with his supervisor.” Gilbert requested a reasonable accommodation which required the agency to display greater sensitivity and awareness of his condition and asked to be placed in an environment where he would not encounter “rejection or criticism.”**

**5. Steve had some serious problems about coming to work on a regular basis and he failed to comply with leave regulations. In his defense, Steve provided extensive medical documentation about his “substantive memory impairment.” As an accommodation, Steve suggested that a responsible member of his family handle leave and attendance matters by communicating with agency officials.**

**6. Hudson was frequently depressed at work and suffered from diabetes and chronic asthma. He was charged with AWOL, creating a disturbance in the workplace, and for repeatedly directing rude and insolent remark at his supervisor. Hudson claimed that his various medical problems and an unsympathetic and uncommunicative supervisor were the cause of his difficulties. He wanted the charges dropped and to be accommodated by being given training which would qualify him for a position in another career field.**

# **HANDLING MEDICAL ISSUES IN THE WORKPLACE**

- **Addressing the problem**
- **Obtaining medical documentation**
- **Determining “Reasonable Accommodation”**
- **Taking disciplinary/performance action**
- **Handling related situations**

# **ADDRESSING THE PROBLEM**

- If the employee does not raise a medical issue, focus on the conduct or performance issue, not the medical aspects.**
- It is the employee's responsibility to raise the medical issue.**

**NOTE: Medical information is private. Only get involved in the medical problem of employees if it impacts their conduct or performance.**

# **OBTAINING MEDICAL DOCUMENTATION**

## **When to request documentation:**

- The employee informs you that they cannot perform the duties because of a medical condition.**
- The employees informs you that the working conditions are impacting her ability to do the work.**
- The employee raises a medical condition in response to a disciplinary/performance action.**

# **OBTAINING MEDICAL DOCUMENTATION**

## **Why request documentation?**

- Need to know what the employee is suffering from and what impact it has on the job.**
- Be specific for what you ask.**
- Include relevant documents such as job descriptions, working conditions, etc...**
- The employee must comply with your request for medical documentation.**



# **TAKING THE ACTION**

- **If unable to work out an agreement, take the normal action:**
  - if action was held in abeyance;**
  - if performance, treat as a performance problem.**
  - if conduct, treat as a conduct problem.**

# **HANDLING MEDICAL ISSUES IN THE WORKPLACE**

## **➤ Related Situations and Dilemmas**

- **What about ordering Fitness-for-Duty Examinations?**
  - (1) medical standards for the position.**
  - (2) RIF placement when there is a doubt.**
  - (3) returning from workers compensation.**
- **How do I handle “drug and alcohol” situations?**
  - ➔ Firm Choice? - no longer a requirement.**
  - ➔ “uniformly applied standard”**

# **HANDLING MEDICAL ISSUES IN THE WORKPLACE**

## **➤ Related Situations and Dilemmas**

- **Can I ever deal directly with the medical problem?**
  - (1) Conclusive medical evidence; and**
  - (2) Demonstrate high probability of hazard to self or others**
- **What about mental problems?**
  - ➔ Same approach but keep in mind:**
    - cannot discriminate solely based on mental problem**
    - do not have to lower standards of performance or**

# DEALING WITH PERFORMANCE ISSUES



# **BASIS FOR PERFORMANCE ACTIONS**



- **5 USC 43, 5 CFR 432**
  - **Directed Reassignment**
  - **Change to Lower Grade or Pay**
  - **Removals**
- **5 USC 53, 5 CFR 531**
  - **Within Grade Increase**
- **Denial**

# **PERFORMANCE BASED ACTIONS PROCESS**

**Beginning of appraisal period.**



**Informal steps to improve  
performance.**



**Formal opportunity to improve.**



**Notice of proposed action.**



**Employee's answer to proposal  
notice.**



# **TAKING A PERFORMANCE BASED ACTION**

**STEP 1: Communicate Expectations  
and Address Performance  
Problem(s).**

**STEP 2: Provide an Opportunity to  
Improve Period (PIP).**

**STEP 3: Take the Action**



# STEP ONE CHECKLIST

- ☒ Are you sure the issue is primarily a performance problem (as opposed to misconduct)?
- ☒ Have you communicated the standards to the employee?
- ☒ Are the standards clear and reasonable?
- ☒ Have you coordinated with your Human Resource Specialist?
- ☒ Have you told the employee which objectives he or she is failing?
- ☒ Have you counseled the employee?



# **PERFORMANCE STANDARDS**

## **Objectives**

- **Critical vs. Noncritical:** Can only take action based on unacceptable performance of a critical standard.
- **Absolute:** may be invalid if it requires 100% compliance (leave room for higher achievement).
- **Backward:** identifies a level of unacceptable performance rather than acceptable - performance and improvement are therefore invalid.

# ADDRESS THE PROBLEM



- **Discuss situation in private with employee.**
- **Relate deficiencies to performance objectives and expectations.**
- **Offer employee ASSISTANCE PROGRAM IF PERSONAL PROBLEMS EXIST.**

# **TAKING A PERFORMANCE BASED ACTION**

**STEP 1: Communicate  
Expectations and Address  
Performance Problem(s).**

**→ Performance Standards**

**STEP 2: Provide an Opportunity  
to Improve Period (PIP).**

**→ Requirements**

**STEP 3: Take the Action.**

**→ Due Process**

# **Provide an Opportunity to Improve Period (PIP)**

- **Initiate a performance improvement plan (PIP) if:**
  - **performance is unacceptable**
  - **what if it's not at the end of the rating period?**
- **Deny within-grade increase**
  - **Requires issuance of an appraisal**
  - **WIGI denied when performance falls below Level 3.**

# WHAT IS A PIP?

- **Opportunity Period to Improve - Formal plan designed to assist employee in improving performance**
- **Details deficiencies (Specify standards not met & provide examples)**
- **Minimum standards to be achieved**
- **Provides reasonable time to improve**
  - normally 60 to 120 days



# **WHAT IS A PIP? (cont.)**

- **Identifies consequences of continued failure**
  - **reassignment**
  - **change to lower grade**
  - **removal**
- **Actions employee must accomplish**
- **Specify assistance to be given**
- **Specify calendar dates for completing tasks**
- **If employee improves, must sustain improvement for one year from beginning of PIP or face action without additional PIP (unless failure is on an objective that the PIP didn't cover)**

# PIP

## □ **“Flesh Out” PARTICULARS**

- Although a PIP may not be used to change the level of performance required, it can be used to “flesh out” the meaning of existing standards.

## □ **Time tables should reflect:**

- Employee and supervisory absences.
- Normal work flow - consider holidays, end of year demands.

## □ **Work products should be:**

- On-going work, not focused on backlog.<sup>71</sup>

# PIP PARTICULARS (cont)

## ▢ Assistance

- Be specific, but be sure to **DELIVER!**
- Formal training? Coaching? Checklists?

## ▢ Reasonable Accommodation

- Include reference to medical even if the employee did not raise the issue.

## ▢ Leave

- Non-discretionary leave may result in PIP

extension



# **TAKING A PERFORMANCE BASED ACTION**

**STEP 1: Communicate  
Expectations and Address  
Performance Problem(s).**

**→ Performance Standards**

**STEP 2: Provide an Opportunity  
to Improve Period (PIP).**

**→ Requirements**

**STEP 3: Take the Action.**

**→ Due Process**

# **DUE PROCESS REQUIREMENTS**

- **Advance written notice (Proposal)**
  - **30 Day notice of proposed action**
  - **Specific instances of unacceptable**

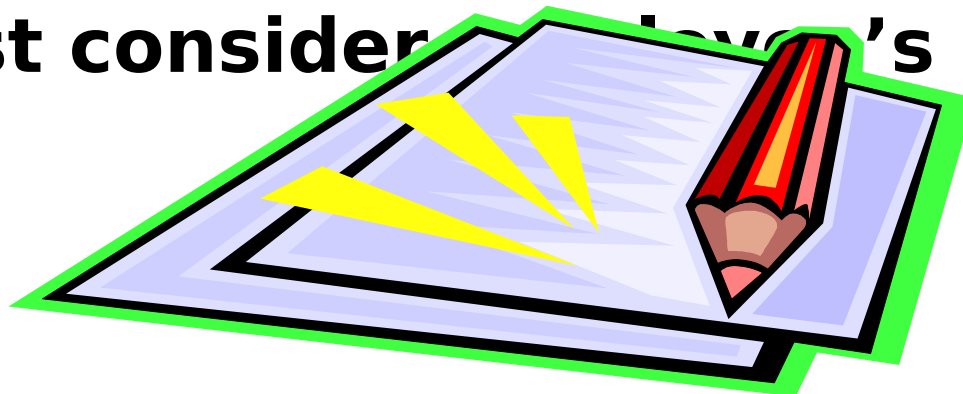
**performance of critical  
elements**

- **Only instances which occurred in**

**12 months preceding**<sup>74</sup>

# WRITTEN DECISION

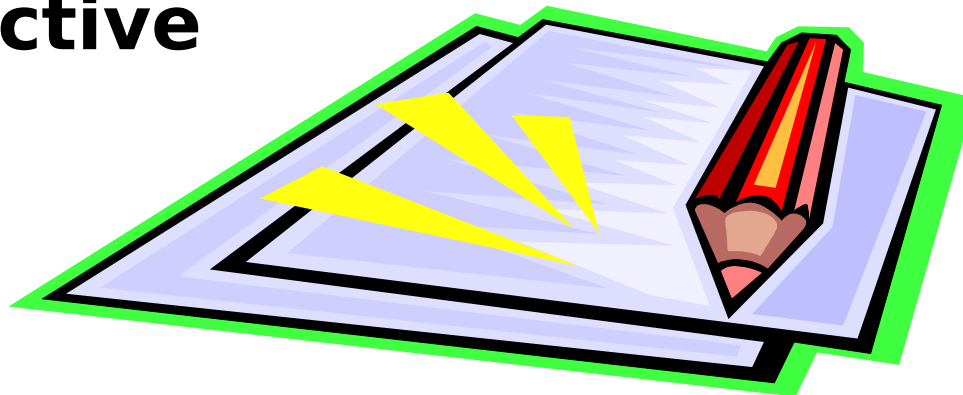
- **Within 30 days after expiration of notice period**
- **Specify instances of unacceptable performance**
- **Concurrence by higher level official**
- **Must consider employee's reply**



# WRITTEN DECISION

(cont.)

- **Consider improvement during notice period**
- **State effective date**
- **Grievance/appeal right, not both**
  - **provide copy of MSPB appeal rights**
- **Deliver at or before action effective**



# **SUMMARY**

**To sustain your action, you must prove**

- (1) the employee was notified that he/she required to perform a particular duty;**
- (2) the employee's performance of the duty was unacceptable; and**
- (3) the employee's performance was measured accurately and reasonably.**

# EXERCISE TIME

## Case Studies: Taking Corrective Action



# **1. THE POSSESSION CASE**

**David Paxton is a guard at an Army Depot. On September 10, 1994, he was at a party with some friends when the police arrived and arrested him along with several others for possession of marijuana. The Depot found out about the charges but allowed him to continue working. He has been employed for 10 years and his work and performance records are unblemished. In November 1994, he pled guilty to possession of a small amount of marijuana and was given 60 days probation. Shortly after that, the Depot proposed his removal for possession of marijuana off duty. In his oral response and written reply he argued that he should not have been disciplined because there was no connection between the misconduct and the efficiency of the service. He pointed to this work and performance record both before and after the incident as evidence that the misconduct had no effect on the performance of his duties. He also argued that the penalty was too severe in relation to his satisfactory 10 year work and performance record.**

**--The deciding official has asked for your view as to whether the misconduct has affected the efficiency of the service.**

## **2. NEW SUPERVISOR ON BOARD!**

**Mrs. Joan Smith, wife of CPT Al Smith, was hired as a GS-3, Clerk-Typist. Mrs. Smith and her husband live approximately five miles from her place of employment. She and her husband ride to work together. There is no place to eat in the immediate area, so she takes her husband to work and keeps the car during the day. Mrs. Smith began working in August, 2 years ago. Her work was considered satisfactory as attested to by performance evaluations and several letters of appreciation and commendation.**

**This August, 2 years later, a new supervisor, SGT Brown, took over the branch. He was extremely conscious of punctuality by all employees and closely observed them for compliance with established working hours. For a period of time, he observed that Mrs. Smith was consistently 2-10 minutes late arriving at work. He began to document her arrival times.**

**On 14 December, SGT Brown and Joan had a disagreement on an issue involving correctness of a**



**The basis for the proposed removal was insubordination and excessive tardiness. To support the action, he provided records showing that she had been from 2-10 minutes late 26 times during the last 3 months and an affidavit that she used a profane word to him during the altercation on 14 December. In her reply of 22 December, Mrs. Smith contended that:**

- ➔ She had been late several times; however, when tardy, she made up the time during the lunch period or by staying later in the evening.**
- ➔ Her supervisor had never expressed any dissatisfaction with her punctuality.**
- ➔ Regarding the altercation on 14 December, she said SGT Brown approached her by asking, “Why in hell isn’t this report correct?”**
- ➔ The only reason he wanted her removed was because his assistant’s daughter had just passed the clerical test and the office “scuttle-butt” was that her supervisor has promised her job to this girl.**

### **3. JANE HAS A PROBLEM.....**

**Jane is a registered nurse working at the base Health Clinic. Yesterday during a counseling session with her supervisor regarding her erratic attendance and declining performance over the last several months, she told her supervisor that she was arrested six weeks ago and charged with driving under the influence (DUI) and possession of an illegal substance (cocaine). She explained that last week she was convicted of the offenses and her drivers' license was revoked. She stated that she will not get her drivers' license back until she attends a drug rehabilitation clinic, but she denies any addiction and refuses to enter rehabilitation. Her husband and son will take turns bringing her to work and taking her home so she doesn't need her license back anyway. She attributes her erratic attendance to work-related stress and the fact that her husband and son were both out of town two weeks ago. She blamed her supervisor for the performance problems, saying she did not have clear instructions.**

**--What are the agency's burdens in dealing with Jane's**

#### **4. BILLY...MY FAVORITE EMPLOYEE**

**Billy is a Computer Analyst who makes the rounds of the post trouble-shooting automation problems. During a chance encounter, Billy's supervisor, Melissa, smelled alcohol on his breath and noted that Billy's speech was slurred. When asked whether he had been drinking, Billy erupted, told her to mind her own business, and threatened to "knock her silly." This was not the first time she had found Billy in an apparently intoxicated state while on duty. In fact, Billy had just served a two day suspension for being disruptive and belligerent with co-workers. He was enrolled in an on-post treatment program for his mood swings and his alcoholism. Billy was reported to be making good progress in this program and the agency has a policy that requires it to provide accommodation before taking disciplinary action.**

**--What are the agency's burdens in Billy's situation?**

**How do you proceed?**

## **5. MICHAEL “I KNOW WHAT TO DO” STANTON**

**Jessie Brighton is the supervisor of Michael Stanton, a computer analyst who has a very confrontational and abrasive style of interacting with people. Ms. Brighton gives him small work assignments, which are well within his expertise level and he frequently reacts with arguments about why the work does not need to be done. She just gave him a minor project, which should not require more than a few hours of work, but he told her it was a ridiculous waste of his time and he doesn't see why anybody should do it. Even though Ms. Brighton gave him multiple reasons why the project was necessary and why she gave it to him, Mr. Stanton continued to argue about the stupidity of the project. Ms. Brighton finally closed her discussion with him by telling him to do the project, regardless of his feelings about it, and hand it in three days later, Friday, at 11:00 a.m.**

**When the work was not turned in, Ms. Brighton asked Mr. Stanton for an explanation. He tells you that he felt compelled to complain about the project to the next higher manager, Jim Stewart, and he still hadn't heard back about whether he still has to do it. When asked whether Jim Stewart told him he didn't have to do it, Mr. Stanton reluctantly said “No”.**

## **6. TIM “THE NIGHTMARE” SPAULDING”**

**Tim Spaulding, is a Wage Grade employee who has made a science out of time wasting. He works fairly independently as a maintenance worker at your activity. He makes sure that he comes to work on the dot—not a second sooner. Then he takes his time to put on his work clothing, get his equipment together, check his schedule, fix his coffee, and after about 15-25 minutes he declares he’s ready to go. In the meantime, all the other employees are waiting so that Annette Priori, the supervisor, can give them all their work assignments for the day. Then Spaulding makes an easy day of it by taking long breaks, numerous smoking intermissions, long lunches, personal phone calls, chit-chats with various friends and visitors, etc.**

**One of his performance standards requires him to complete a set maintenance schedule on various pieces of equipment and buildings. This performance measure is precise, easily measurable, and already monitored. With about six months left in the rating period, he has completed only about 20% of the maintenance schedule**

## **7. FRANK PLOY...SAY NO MORE**

**Frank Ploy has been placed on a PIP. Since he wants to be sure that he complies with all and every requirement and expectation that has been laid upon him, he demands the following from his supervisor:**

- That his assignments be given to him in writing**
- That he wants a witness to be present when his performance is being discussed.**
- That a co-worker also be dealt with on his/her flaws or failings in performing the work.**
- An explanation why nobody ever mentioned or talked to him before about his alleged performance problems (just look at his extensive record of satisfactory or better ratings!).**
- Copies of the grievance procedure and the EEO complaint process so that he can file and action over his PIP.**

**--What would be your counsel to the supervisor on how to react to/deal with each of Mr. Ploy's demands?**

# GRIEVANCE & APPEALS



# WHAT IF THE EMPLOYEE FILES A GRIEVANCE ?

- IS THE ISSUE GRIEVABLE?
- IF SO, WHAT IS THEIR RECOURSE (one or the other):
  - Merit System Protection Board (MSPB) Appeal
  - Grievance Procedure
    - **negotiated procedure: bargaining unit employees**
    - **agency procedure: non-bargaining unit employees**
      - **covers BU employees if issue is not covered by or NGP is not in effect at the time**



# **PURPOSE OF GRIEVANCE PROCEDURE**

- **To provide a fair, equitable and timely forum for review and resolution of employment-related matters.**



# **GRIEVANCE DEFINITION**

- **Involves a matter of personal concern**
- **Must be subject to control of management**
- **Requested personal relief is available**



# **NONGRIEVABLE ACTIONS**

- **Under Administrative Grievance System:**
  - **DOD regulation contains 14 specific exclusions**
  - **Component can request other exclusions from DOD through OPM**



**DoD 1400.25-M, Subchapter 771**

# **ADMINISTRATIVE GRIEVANCE PROCEDURE**

- **Informal problem solving step:**
  - **employee presents grievance informally to supervisor within 15 calendar days of event creating dissatisfaction or when employee became aware of dissatisfaction**
  - **management responds within 15 calendar days**
  - **if employee is not satisfied, management informs employee of available grievance/appeal procedures**

# **ADMINISTRATIVE GRIEVANCE PROCEDURE**

- **Formal grievance**
  - **if employee is not satisfied with informal decision, may file a written grievance within 15 calendar days of receipt of informal decision**
  - **deciding official may resolve using alternative dispute resolution technique:**
    - **mediation**
    - **fact-finding**
    - **settlement conference**
    - **peer review**
    - **arbitration**

# **ADMINISTRATIVE GRIEVANCE PROCEDURE (cont)**

- **Formal grievance**
  - **deciding official issues a final and binding written decision within 60 days of receipt of grievance**
  - **to higher level if cancelled or no decision in 90 days**



# **MERIT SYSTEMS PROTECTION BOARD (MSPB)**

- Independent Government Agency
- Operates like a court
- Ensures actions taken against employees are based on Merit Principles
- Adjudicates employee appeals



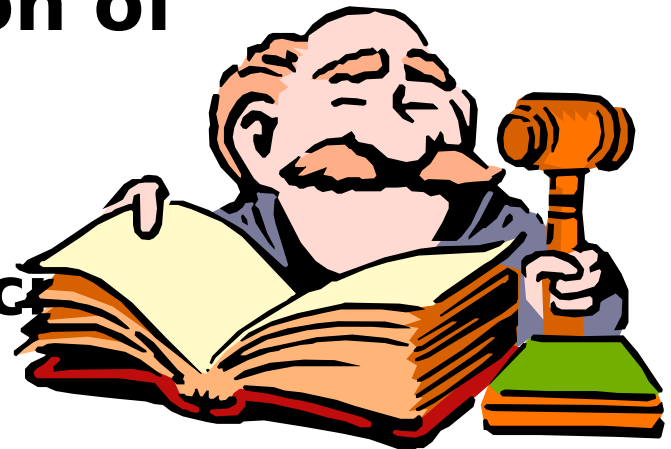
# **APPEALABLE ACTIONS**

- **Suspension exceeding 14 days**
- **Reductions in grade or pay**
- **Removals**
- **Furloughs of 30 days or less**
- **Denials of within-grade increases**
- **OPM suitability determinations**
- **OPM determinations on retirement matters**
- **Denials of restoration of reemployment rights**
- **Terminations of<sup>6</sup> probationary**



# APPEAL PROCESS

- **Employee is in receipt of a decision notice of an appealable action**
- **Employee files petition for appeal**
- **Settlement discussions**
- **Hearing (at discretion of appellant)**
  - **Yes: Discovery**
  - **No: Judge issues decision**
- **Decision by Administrative Judge**



# **APPEAL PROCESS**

- **Employee or Agency may petition the full Board for review of the Judge's decision if not satisfied**
  - **The full Board determines merit and issues a decision without an additional hearing**
- **May appeal to the Federal Court of Appeals if not satisfied**